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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,163	04/12/2002	Hans Bomer	C & F 1032-035	4955
8698	7590	11/26/2003	EXAMINER	
STANDLEY LAW GROUP LLP 495 METRO PLACE SOUTH SUITE 210 DUBLIN, OH 43017			TRUONG, THANH K	
		ART UNIT	PAPER NUMBER	
		3721		

DATE MAILED: 11/26/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)
	09/937,163	BOMER ET AL.
	Examiner Thanh K Truong	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 30 is/are allowed.

6) Claim(s) 16-29 & 31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

    1. Certified copies of the priority documents have been received.

    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    \* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

1. This action is in response to applicant's amendment, Paper No. 10, received on October 2, 2003.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 16-29 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "non-rotating mandrel" in claim 16, line 7; in claim 29, line 7 and in claim 31, line 6, is new matter. There is no support in the original specification for this claimed limitation.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 31, line 10, the phrases: "the region of a pocket" and "pocket conveyor" are vague and indefinite, for it is unclear what region is the applicant referred to; what is the applicant referred to as "a pocket", and where is the "pocket conveyor". These phrases can not be found any where in the specification.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 16, 17, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakajima (4,516,382).

Nakajima discloses (figures 1A–1F) a method of producing a laminated package with an opening that is sealed by a tear-off strip, comprising: an opening is punched out of a packaging material (figure 1A & 1B); the package material is coated (column 7, lines 49-52); a package sleeve is created from the packaging material (figure 1A-1C); a tear-open strip is attached to the opening in the package sleeve (figure 1C); and the package sleeve is slid onto a non-rotating mandrel of a mandrel wheel upstream from a filling machine for filling the package (figures 3-5). Figure 5, clearly shows that the mandrel 8 is not rotating while the mandrel wheel 6 is.

Nakajima implicitly discloses that the tear-open strip is attached at the mandrel of the mandrel wheel. Figures 1A-1C explicitly disclose that the tear-open strip is attached to the opening of the package sleeve before the bottom of the package sleeve is completely folded and sealed, and referring to figure 3, one would conclude that the package sleeve is on the mandrel 8 of the mandrel wheel while the tear-open strip is applied to the package sleeve somewhere before bottom sealing device 14.

Nakajima further discloses: the package sleeve is conveyed to the filling machine in such a way that its opening points outward across the working direction of the filling machine (figures 3-5); and the filling machine is a filling machine having multiple lanes (figures 3 & 4).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21, 22, 24, 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382) in view of Watanabe (4,986,859).

As discussed above in paragraph 6 of this office action, Nakajima discloses the claimed invention, but Nakajima does not explicitly disclose that the tear-off strip is attached by welding; the tear-off strip is pulled off from a supply roll, and is detached from the supply roll by a cutting device.

Watanabe discloses a method of attaching a tear-off strip on a cut-out hole of a container (figure 10) comprising: the tear-off strip is attached by ultrasonic welding, and the tear-off strip is detached from the supply roll by a cutting device (figures 1, 2 & 10, and column 4, lines 8-19). Watanabe further discloses the tear-off strip is pulled off from a supply roll having a plurality of tear-off strips (figure 2). Watanabe provides an improve method that prevents leak between the tear-off strip and the container thus prevents the spoilage of the content within the container (column 2, lines 25-34).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Nakajima's method by applying the method of attaching the tear-off strip over a punched out hole as taught by Watanabe for providing an improve method that ensure a strong sealing of the punched out hole of the container by a tear-off strip.

9. Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 6 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose an aseptic station of the filling machine down stream from where the tear-off strip is applied.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nakajima method to include an aseptic station of the filling machine before filling the container since it was known in the art that an aseptic station would provide a means to sanitize the container before filling to prevent any spoilage due to contamination of the content within the container.

10. Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 6 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose that the tear-off strip is attached by gluing.

Using glue to adhere two separate parts together is well known practice in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the

time the invention was made to modify Nakajima method to use glue to attach the tear-off strip to the container instead of an ultrasonic welding method, as a matter of design choice, providing diversity and flexibility to the method of attaching tear-off strip to the container.

11. Claims 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima (4,516,382).

As discussed above in paragraph 6 of this office action, Nakajima discloses the claimed invention, but Nakajima does not expressly disclose that the tear-off strip consists of a tear-resistant aluminum strip.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a tear-resistant aluminum as the material for the tear-off strip in Nakajima method for it provides additional strength, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

#### ***Allowable Subject Matter***

12. ~~Claims 18, 19 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.~~

13. Claim 30 is allowed.

***Response to Arguments***

14. Applicant's arguments filed September 9, 2003 have been fully considered but they are not persuasive.

15. In response to the Applicant's argument that Nakajima does not claim the attachment of a tear-off strip while the package sleeve is on the mandrel of a mandrel wheel, the examiner disagree. Nakajima clearly disclose that the tear-off strip is attached to the opening of the package sleeve before the bottom of the package sleeve is completely folded and sealed (figure 1C), furthermore, figures 3, 5 & 6 show that the package sleeve is bottom sealed before it being discharged from the mandrel wheel. Therefore, the tear-off strip have to be applied to the opening of the package sleeve while the package sleeve is on the mandrel of a mandrel wheel. Figure 3 explicitly discloses the filling step is integrated with applying the tear-off strip in a packaging filling machine.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

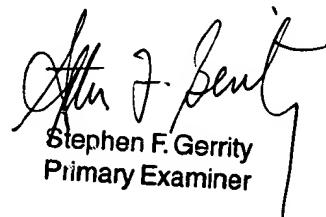
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

tkt  
November 20, 2003.



Stephen F. Gerrity  
Primary Examiner